

ASSEMBLY BILL

No. 1581

Introduced by Assembly Member Wieckowski
(Principal coauthor: Senator Wolk)

February 2, 2012

An act to add Section 17537.15 to the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 1581, as introduced, Wieckowski. Advertising: business location representations: floral businesses.

Existing law provides for the regulation of advertising in this state and makes certain advertising practices unlawful. A violation of the provisions regulating advertising is a crime.

This bill would make it unlawful for a floral business, as defined, to misrepresent the geographic location of its business by (1) listing a local telephone number in any advertisement, as defined, unless the advertisement identifies the true physical address, including the city, of the floral business; or (2) representing the geographic location of the floral business as “local,” “locally owned,” or as being physically located, as defined, in this state if it is not physically located in this state, in specified manners that would cause a reasonable consumer to believe that the floral business is physically located in this state, or if a telephone call to the telephone number listed in the advertisement routinely forwards or transfers the caller to, or terminates in, a physical location outside of this state. This bill would also state that its provisions shall not be construed to create or impose any obligation or duty upon a person other than a floral business and would specify circumstances under which provisions of the bill would not apply.

By creating new advertising prohibitions, the violation of which would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17537.15 is added to the Business and
2 Professions Code, to read:
3 17537.15. (a) For purposes of this section, the following terms
4 shall have the following meanings:
5 (1) "Advertising medium" means any of the following:
6 (A) Telephone directory or other directory assistance database.
7 (B) Television.
8 (C) Radio.
9 (D) Newspaper, magazine, flyer, brochure, or other print
10 medium.
11 (E) Billboard, sign, or poster.
12 (F) Facsimile.
13 (G) Electronic mail or other electronic form of communication.
14 (H) The Internet and services available by means of the Internet.
15 (2) "Advertisement" means any oral, written, or graphic
16 statement or representation made while engaging in floral business
17 regardless of the medium of communication for the purpose of
18 inducing, directly or indirectly, the purchase of floral arrangements,
19 plant arrangements, and related merchandise and services by a
20 resident of this state or for delivery to a resident of this state.
21 (3) "Floral business" means a business that engages directly or
22 indirectly in the retail sale of floral arrangements, plant
23 arrangements, and related merchandise and services that are
24 purchased by a resident of this state or for delivery to a resident
25 of this state, including, but not limited to, the sale, offer for sale,
26 marketing, distribution, order gathering, and advertisement of
27 floral arrangements, plant arrangements, and related merchandise
28 and services.

1 (4) “Local telephone number” means a specific telephone
2 number (area code and prefix) assigned for the purpose of
3 completing local calls between a calling party or station and any
4 other party or station within a designated exchange or all of its
5 designated local calling areas. The term “local telephone number”
6 does not include long distance telephone numbers or 800, 888, or
7 900 exchange telephone numbers listed in a local telephone
8 directory.

9 (5) “Physically located” means having a place of business that
10 is a physical geographic presence in this state at a location
11 designated by a post office mailing address in this state.

12 (b) It is unlawful for a floral business to misrepresent the
13 geographic location of its business by doing any of the following
14 in an advertising medium:

15 (1) Listing a local telephone number in any advertisement, unless
16 the advertisement identifies the true physical address, including
17 the city, of the floral business.

18 (2) Representing the geographic location of the floral business
19 as “local,” “locally owned,” or as being physically located in this
20 state if the floral business is not physically located in this state and
21 any of the following applies:

22 (A) The name of the floral business specified in the
23 advertisement is a fictitious business name or an assumed business
24 name that would lead a reasonable consumer to conclude that the
25 floral business is physically located in this state.

26 (B) The advertisement uses the name of or any form of contact
27 information for another floral business that is physically located
28 in this state in a manner that would cause a reasonable consumer
29 to believe that the floral business is physically located in this state.

30 (C) A telephone call to the telephone number listed in the
31 advertisement for purposes of contacting the floral business
32 routinely forwards or transfers the caller to, or terminates in, a
33 physical location that is outside of this state.

34 (D) The advertisement would otherwise lead a reasonable
35 consumer to conclude that the floral business is physically located
36 in this state.

37 (c) (1) This section shall not be construed to create or impose
38 any duty or obligation on a person other than a floral business as
39 defined in paragraph (3) of subdivision (a).

(2) Subdivision (b) does not apply to a person as to whom any of the following applies:

(A) Has an ownership interest in another floral business that is physically located in this state.

(B) Is a service mark licensee of a service mark of another floral business that is physically located in this state, regardless of whether the service mark is registered under state law or federal law.

(C) Is a franchisor of a floral business that is physically located in this state.

(D) Is engaged in floral business at a geographical location outside of this state and that discloses in a clear and conspicuous manner that would cause a reasonable consumer to easily become aware of the disclosure that the person is engaged in floral business at a geographical location outside of this state.

(3) This section does not apply to any of the following:

(A) A publisher of a telephone directory or other publication or a provider of a directory assistance service publishing or providing information about another business.

(B) An Internet Web site that aggregates and provides information about other businesses.

(C) An owner or publisher of a print advertising medium providing information about other businesses.

(D) An Internet service provider.

(E) An Internet service that displays or distributes advertisements for other businesses.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.